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C O N F I D E N T I A L SECTION 01 OF 03 GUATEMALA 001751

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SUBJECT: POLITICALLY DRIVEN LOCAL REFERENDUMS SEEK TO BLOCK
MAJOR U.S. INVESTMENTS; GOVERNMENT HOLDING FIRM

Classified By: EconCouns Steven S. Olson for reason 1.4 (d)

Summary

1. (C) Referendums organized by two municipalities in different parts of Guatemala attempted to demonstrate massive local rejection of a large gold mine and a hydroelectric project. Organizers then declared that the people had spoken and demanded that the projects be stopped. The process of conducting the referendum appeared seriously flawed in each case, and neither was able to produce a simple majority of voters, even by the organizers' estimates. Both investment projects involve U.S. interests and enjoy the government's strong support. A local NGO that receives significant European funding and promotes a radical environmental agenda was deeply involved in both cases. Most elite opinion concludes that the referendums are legally meaningless, even if they had been credibly conducted. Many conclude that radical politics, not the investments themselves, is the issue, and some ponder parallels with Bolivia. We describe the two projects briefly -- they are in our minds clearly good for the country. The government recognizes the dangers to future investment if the two projects were to fail but is cautious to avoid being tarred as "against local democracy." End Summary.

2. (U) Guatemala's press, op-ed writers and others of the political class have been discussing the significance of two recent "popular consultations," a sort of referendum governed by the Municipal Code, convoked by the mayors of Sipacapa and Rio Hondo to protest major investments by foreign companies. The two towns are geographically and demographically distant, with Sipacapa in the indigenous highlands of San Marcos and Rio Hondo in the ladino lowlands of Zacapa, but there is no question among observers that the two events are linked. Organizers claim that the referendums demonstrated overwhelming local opposition to a gold mine (Sipacapa) and hydroelectric project (Rio Hondo), but the processes for gauging opinion were suspect and participation was sparse. One common denominator has been the involvement of local environmental NGO Madre Selva, which receives significant financing from foreign sources, thought principally to be European. It is also listed as a "partner" of Oxfam America on the latter's website.

Sipacapa and Glamis Gold's Marlin project

3. (U) Canadian-American Glamis Gold's Marlin project, operated by Glamis subsidiary Montana Exploradora, lies almost entirely within San Miguel Ixtahuacan municipality, though a small portion of its mining license extends into neighboring Sipacapa. Current plans call for extraction only in San Miguel, which will receive a 1% royalty on the value of gross production of gold and silver under Guatemala's modern mining law. Sipacapa is not legally entitled to anything, but Glamis has volunteered to provide it an additional 0.5%. The entire area is desperately poor and unfit for commercial agriculture. In terms of modern jobs, the mine is a godsend. Glamis has an approved environmental impact assessment and reclamation and remediation plans, much of which are validated by reputable international specialists. It has identified a water source in deep wells that, to date, have shown to be entirely independent of surface water supplies used by area inhabitants. Glamis plans to invest at least \$140 million in the project and has identified proven and probable reserves of 2.3 million ounces of gold and 36.3 million ounces of silver.

4. (C) Sipacapa municipality has 13 villages with 5,720 registered voters. Slightly under half (a reported 2,600 people) participated in the June 18 referendum. Eleven villages reportedly voted "against mining," while one was in favor and one declined to participate. Two journalists who witnessed some of the voting told us separately that assembled villagers were lectured by referendum organizers on the dangers of mining and then asked to agree or disagree through a show of hands. Montana Exploradora claims that threats had been made against any who supported the project. San Miguel Ixtahuacan, where the mining will take place, has not sought to organize its own referendum, though its mayor

suggests that good relations may depend on continuing largesse, including a new stadium and hospital for his town.

Rio Hondo's hydroelectric project

15. (SBU) The Rio Hondo project is a 32 MW high head generating facility that brings water through a penstock (pipe) down a 1 kilometer vertical drop into a powerhouse and then returns the water to its original stream bed. It requires a relatively small dam and reservoir (1.5 million cubic meter capacity covering about 16 hectares) in the ecologically sensitive Sierra de las Minas protected area. The project has the support of the mainstream environmental organization Defensores de la Naturaleza because of the operator's commitments to protect the watershed and keep illegal loggers out. The operator, Alaska Power and Telephone subsidiary Hydrowest, has already planted over one million trees in areas where illegal logging had been taking place. Guatemala has modified its renewable energy legislation for the specific purpose of encouraging investment in clean low-cost energy in order to avoid emergency bids for thermal generating capacity as happened when the country faced brownouts in the early 1990s. Detractors of the Hydrowest project allege that it will pollute water and make it unavailable for consumers in the drought-prone Rio Hondo region. Hydrowest and GoG officials counter that the project stores very little water, is therefore little different from a "run-of-the-river" project, creates no pollution, protects the watershed, and provides some limited defense against flash floods.

16. (C) Rio Hondo's July 3 referendum permitted Madre Selva and the likeminded to declare that an overwhelming 97% of voters disagreed with the Hydrowest project, and they demanded respect for "local democracy." However, participation as reported by the partisan organizers was only 28% of registered voters. President Berger's son told EconCouns afterwards that he had driven through the area the day of the referendum and had come across busses in another municipality, Teculután, recruiting voters for the referendum. Guatemalan associates of Hydrowest have been telling us for several years that they believe that opposition to the project comes from the mayor, who wants a payoff, and illegal logging interests. More recently, we have heard rumors that major narcotics trafficking interests from nearby Zacapa (presumably the Lorenzana family) have joined the opposition.

Government is Standing Firm

17. (C) EconCouns has maintained contact on this issue with Presidential Commissioner for Investment and Competitiveness Miguel "Mickey" Fernandez, his deputy Emmanuel Seidner, Presidency Manager (and former Minister of Energy and Mines) Roberto Gonzalez, and current Minister Luis Ortiz. They have formed a working group together with Presidential Coordination Secretary Eduardo Gonzalez and Solicitor General Roberto Molina to ensure that Madre Selva and its friends fail in their efforts to stop the two projects. They believe the government's legal case is unassailable, as the national government's authority for energy and mining is embedded firmly in the Constitution and must be defended at all costs. They also believe it would be a disaster for the investment climate if either project were blocked, and they draw comparisons to what has happened in Bolivia. They are currently exploring having the courts reaffirm that, under Articles 65 and 66 of the Municipal Code, a "consulta" is binding only on issues within the scope of municipal decision-making. Mining licenses and energy project approval are the purview of the national government.

Invoking ILO Convention 169 on Indigenous Rights

18. (SBU) To sidestep the clear delineation of authorities in Guatemalan law, referendum organizers have seized on Guatemala's obligations under ILO Convention 169 to consult with indigenous and tribal people on the use of their land. Madre Selva and others have been careful to restrict their specific arguments to Sipacapa, where the population is predominantly indigenous (Rio Hondo's is not). Former president Alvaro Arzu told the Ambassador July 11 that he insisted on the reservation that ILO 169 would not take precedence over the Guatemala Constitution or law when Guatemala acceded to the Convention. Since then, the Guatemalan Congress has never enacted legislation implementing the vaguely worded ILO 169 or regulating how these "169" consultations should take place. The GoG has not argued that it undertook any sort of consultation in the spirit of the ILO 169 prior to issue Glamis its mining license. Glamis, which has conducted extensive outreach in San Miguel Ixtahuacán and created a foundation to finance development projects and vocational training, notes that it purchased freehold title to the land where it intends to mine, paying more than the going market price, so the issue of indigenous or tribal lands doesn't arise.

Comment

9. (C) We were not witnesses to the voting at either site, but we conclude that it was more along the lines of nationally scripted street theater than a demonstration of considered local sentiment. Most Guatemalans seem to have reached the same conclusion, and the issue has largely faded from news reporting. However, it has inspired continuing discussion in op-ed columns on the purpose and powers of representative government and the role of NGOs. Elite legal opinion has pretty well concluded that the state is constitutionally empowered to approve the Montana and Hydrowest projects and that the referendums could not change anything, even if they had been conducted credibly. We certainly see no backpedaling by the Berger Administration, though there has been restraint so as not to be cast as "opposing local democracy."

10. (C) It remains to be seen how recent events will play internationally, where the press has given this issue some attention. Some NGOs with the best of intentions were caught up in the moment. CARE, for instance, helped organize the Sipacapa referendum but pulled back as best it could after Montana complained and we provided some background on how the project and protests had evolved. The idea of more local awareness and participation is obviously attractive and difficult to be "against," no matter that it may be manipulated. It would be unfair, however, were the impression to spread based on these two referendums that the government was trampling the rights of local inhabitants and carelessly ignoring environmental threats. That simply has not been the case. That leaves the pending question that many are asking about who is financing the recent activism. Most observers seem to think that it's mostly European organizations channeling funds through remnants of the guerrilla left and groups like Madre Selva, but some are starting to wonder if something more nefarious isn't afoot, such as some Bolivarian "solidarity" from Venezuela. So far there is no evidence, but few in business or government we speak with consider it implausible.

WHARTON